

July 16, 2020

VIA ECF

The Honorable Lorna G. Schofield
United States District Court for the Southern District of New York
40 Foley Square
New York, NY 10007

Allianz Global Investors GmbH, et al. v. Bank of America Corporation, et al., 1:18-cv-10364

Dear Judge Schofield:

Pursuant to the Court's January 17, 2019 Civil Case Management Plan and Scheduling Order, ECF No. 144 (the "Scheduling Order"), the parties write to update the Court on the status of the above-captioned action.

Pending Motions

On June 4, 2020, Plaintiffs filed a pre-motion letter seeking leave to file a Third Amended Complaint, which Defendants have opposed. *See* ECF Nos. 415, 429, 431, 432, 454. On June 15, 2020, Defendants moved to certify for interlocutory appeal certain aspects of the Court's May 28, 2020 Order on Defendants' 12(b)(6) motion, ECF Nos. 438, 458, which Plaintiffs have opposed, ECF No. 444. Both Plaintiffs' request to amend and Defendants' request for certification are currently under submission.

No other motions are pending other than the discovery-related motions discussed below.

Discovery

On June 16, 2020, the Court referred this case to Magistrate Judge Stewart D. Aaron for general pre-trial proceedings. ECF No. 441. Following a telephonic conference with all parties on June 24, 2020, Judge Aaron issued an order resolving certain discovery disputes, and setting a further telephonic conference for July 29, 2020. ECF No. 452. The parties are to file a joint update letter with Judge Aaron by July 24. *Id.*

On June 25, 2020, Judge Aaron entered an order prescribing a fact discovery schedule for the remainder of the case. ECF No. 453. Under the schedule, (a) document production in response to prior requests must be substantially complete by October 16, 2020; (b) all document production must be substantially complete by April 1, 2021; and (c) all fact discovery must be complete by September 1, 2021. *Id.* The parties have now largely agreed on an ESI protocol and will be submitting the protocol, along with any remaining disputes, to Judge Aaron.

Discovery by Plaintiffs. Pursuant to the Court's January 17, 2019 Order, ECF No. 143, Defendants have produced the unredacted operative complaint in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* (S.D.N.Y. No. 13-cv-7789) ("*FOREX*"), and the chat transcripts produced in that action.

On February 15, 2019, and April 15, 2019, Plaintiffs served their First and Second Sets of Requests for Production of Documents. The parties have met and conferred on Defendants' responses and objections, resulting in additional productions (or agreements to produce) by some Defendants. On July 14, 2020, Plaintiffs filed a letter motion with Judge Aaron seeking to compel (1) certain defendants to run Plaintiff name searches on documents previously collected but not produced as part of document production efforts in the *FOREX* class action and government investigations into the FX market, and (2) Deutsche Bank to provide certain information on custodians whose materials the bank collected as part of prior productions to regulators and others. Plaintiffs will raise any other ripe disputes as necessary.

On May 7, 2020, the Court lifted the discovery stay as to all 12(b)(2) Defendants that were not dismissed by the Court's April 30, 2020 Opinion, except Société Générale, ECF No. 391. The stay as to Société Générale was lifted on May 19, 2020, when the Court denied its motion for reconsideration of the Opinion, ECF No. 403. All non-dismissed 12(b)(2) Defendants have now served responses to Plaintiffs' previously-served discovery requests, and the parties are meeting and conferring concerning the sufficiency of those responses.

On April 21, 2020, Plaintiffs served a First Set of Interrogatories on Defendants concerning categorization of trades and trade location. Most Defendants served responses on May 21, 2020, and the Defendants that had moved to dismiss under Rule 12(b)(2) served their responses on June 8 or June 18, 2020, 30 days after the stay of discovery against them was lifted. ECF No. 393. By agreement of the parties, the Barclays Defendants served their responses on June 22, 2020. Plaintiffs are meeting and conferring with Defendants on their objections and responses, and will raise any ripe disputes as necessary. In addition to meeting and conferring on interrogatory responses, the parties are engaging in informal discussions to better understand their respective trade datasets, including responding to questionnaires or other informal requests.

On May 13, 2020, Plaintiffs served a notice of deposition under Rule 30(b)(6) of the Federal Rules of Civil Procedure on the JPMorgan Defendants. On June 3, 2020, the JPMorgan Defendants served their objections to the notice, and on June 24, 2020, Judge Aaron resolved the parties' disputes as to the scope of topics. The parties are discussing dates and protocols for the deposition.

On June 16, 2020, Plaintiffs served a Third Set of Requests for Production. Responses to the requests are due on July 16, 2020.

As to third party discovery, Plaintiffs served subpoenas on EBS Dealing Resources Inc. and CME Group Inc. on March 19, 2020, and on Refinitiv US LLC (formerly known as Thompson Reuters LLC) on March 31, 2020, to obtain, *inter alia*, FX transaction level data and data used to calculate benchmark rates. Plaintiffs have been meeting and conferring with these third parties on the scope of their data production and will raise any disputes as necessary.

Discovery by Defendants. Pursuant to the Court's January 17, 2019 Order, ECF No. 143, Plaintiffs have produced or identified data underlying the economic analysis in the Second Amended Complaint, Plaintiffs' FX transactional data, and information on the individuals who traded FX for Plaintiffs.

On March 12, 2019, Non-Foreign Defendants served their First Set of Requests for Production of Documents. Plaintiffs served their responses and objections to those document requests on April 11, 2019. Since May 2019, Plaintiffs have been producing responsive non-custodial documents on a rolling basis. The parties are engaged in ongoing meet and confers on certain requested categories, including custodial documents.

On May 22, 2019, the JPMorgan Defendants served a First Set of Interrogatories on Plaintiffs. Plaintiffs served their objections and responses on June 21, 2019. Pursuant to the Court's August 7, 2019 Order, ECF No. 262, Plaintiffs served supplemental responses on August 21, 2019, and the parties filed a joint letter concerning the sufficiency of those responses on August 28, 2019, ECF No. 266. Pursuant to the Court's October 17, 2019 Order, ECF No. 314, each Plaintiff served on December 6, 2019, responses to a questionnaire relating to Interrogatory Nos. 1 and 3.

On March 30, 2020, UBS Securities LLC served a First Set of Interrogatories on certain Plaintiffs concerning those Plaintiffs' allocation of trades between the US and UK actions. All Plaintiffs served responses on April 29, 2020. Defendants have met and conferred on Plaintiffs' objections and responses, and will further meet and confer with Plaintiffs on any issues.

On April 10, 2020, the JPMorgan Defendants served a Second Set of Interrogatories on Plaintiffs concerning categorization of trades and trade location. All Plaintiffs except for Norges served responses on May 11, 2020. By agreement of the parties, Norges served its responses on June 10, 2020. Defendants are continuing to review the objections and responses served on May 11, 2020, and will meet and confer with Plaintiffs on any issues.

On April 13, 2020, Non-Foreign Defendants served a notice of deposition under Rule 30(b)(6) of the Federal Rules of Civil Procedure on BlackRock Plaintiffs. The BlackRock Plaintiffs served their responses on May 4, 2020, and on June 24, 2020, Judge Aaron resolved the parties' disputes as to the scope of topics. The parties are discussing dates and protocols for the deposition.

On May 28, 2020, the Bank of America Defendants served a First Set of Interrogatories on Plaintiffs concerning Plaintiffs' use of custodial banks' standing instruction programs to trade FX. Plaintiffs served their objections and responses on June 29, 2020, and expect to serve supplemental responses on a rolling basis and to be complete by August 7, 2020.

On June 16, 2020, Non-Foreign Defendants served their Second Set of Requests for Production of Documents. Plaintiffs will serve their objections and responses on July 16.

As to third party discovery, various Defendants have served subpoenas on third-parties, including HSBC on June 3, 2020 to T. Rowe Price Group, Inc.; Deutsche Bank on June 4 to Brown Brothers Harriman; JP Morgan on June 4 to The Bank of New York Mellon; Morgan Stanley on June 4 to State Street Corporation; Bank of America on June 4 to RCM Capital Management LLC; UBS on June 16 to Northern Trust Corporation; and RBS on June 18 to AXA Rosenberg Investment Management LLC.

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